

United States Department of State

Washington, D.C. 20520



Dear Mr. Miller:

The Department of State has reviewed the Central Intelligence Agency's proposed report on S.1721, the Intelligence Oversight Act of 1987, and its draft of testimony by Judge Webster before the Senate Intelligence Committee. The Department shares the views contained in the report and testimony, and believes that the Administration should oppose the bill as an unnecessary and unwise limitation on the President's flexibility in the authorization of intelligence activities. We also concur in the proposed Justice Department report on the Constitutional aspects of the bill.

The CIA report makes it clear that it does not seek to enumerate all of the problems posed by the bill, and offers to provide more specific comments during subsequent discussions. We concur with this approach, and we expect to have specific comments on the bill at the appropriate time, particularly with respect to the definitions contained in the bill. We will be in touch with CIA and NSC with respect to these matters.

However, we suggest that Judge Webster's testimony or the Executive Branch comments on the bill make an additional point -- namely, that the bill could have a deleterious and strategically harmful effect on our ability to secure foreign cooperation in the conduct of intelligence activities. Specifically, the proposed requirement in the bill to specify in each finding all foreign countries involved in each special activity would inhibit foreign countries from agreeing to assist the U.S. in such activities. We fail to see any need for such a categorical requirement, and believe that such matters should be handled on the basis of common sense and mutual accommodation between the Executive Branch and the Committees.

The Honorable
James C. Miller, III,
Director,
Office of Management and Budget.

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We also believe that the Executive Branch should point out the undesirability of the proposed deletion by the bill of language currently in Section 501 of the National Security Act which acknowledges expressly that the provisions of that section are subject to the authority and duties conferred by the Constitution on the executive and legislative branches. In his testimony before the House Intelligence Committee on June 10 on a comparable House bill, Under Secretary Armacost made the point that while no statutory amendment may limit such authorities and duties, the deletion of the current language would give the impression that the Congress in some fashion wanted to diminish or undermine the President's constitutional position and authority. At a minimum, it reflects a Congressional view that the President does not have the Constitutional authority claimed. We suggest that this point be reiterated, either in Judge Webster's testimony, in the CIA comments, or in the Justice report.

Finally, the Department recognizes that the release of the Iran-Contra report may generate additional pressure in Congress to adopt new legislation to deal with covert activities. We can offset some of this pressure by the fact that Judge Webster now runs the CIA and has great credibility. It is unclear at this point, however, whether we can prevent the bill's adoption or sustain a possible Presidential veto in light of the support it appears to have already gained. Therefore, while we need to oppose the bill, we believe it would be prudent to consider whether an acceptable compromise could be reached with Congress on this subject through some modification of the provisions of the bill.

Sincerely,

J. Edward Fox
Assistant Secretary
Legislative Affairs

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